COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 130 of 2002

U.P.S.R.T.C. through
Regional Manager. ….. **Appellant.**

Versus

Smt. Poonam Dua
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 16-03-2002 passed in M.A.C. Petition. Case No. 185 of 1997, Smt. Poonam Dua and others Vs. U.P.S.R.T.C. and another, by Motor Accident Claims Tribunal/Addl. District Judge, III F.T.C. Dehradun ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.4,00,000/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimants-respondents under Section 166 of the Act. Aggrieved, the owner-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal on the ground that the accident in question was not the result of rash and negligent on the part of driver of the appellant, and the Tribunal has failed to appreciate the evidence on record as well as on the point of income of the deceased and the interest awarded is excessive.

Brief facts of the case are that on 29.9.1997, at about 7-50 a.m. Devendra Dua (the deceased) was coming back on his

scooter No. DNK-5764 from Doon International School Dalanwala. When he reached near Panchayati Mandir, in the mean time U.P.S.R.T.C. bus no. UGY-8216 came from behind and hit the scooter with the result the deceased fell down and run over by it due to rash and negligent driving by the driver of the offending vehicle, thereby the deceased sustained grievous injuries and died on the spot. However, few persons assembled there and rushed him to the hospital, where he was declared dead. Bus driver ran away from the spot along with the bus. The deceased was aged 34 years and was earning Rs. 10,000/- per month. Hence the claim petition by the dependents/legal heirs of the deceased.

The Opposite Parties filed written statement and contested the claim petition. It has been alleged by the O.P.-appellant that the accident was the result of the scooterist himself and the scooter slipped away due to rains and fell down dashing from the back side of the bus. It has been alleged that the deceased was taken to Doon Hospital by the driver of the bus.

The Tribunal framed necessary issues in the case. After considering the entire evidence, the Tribunal, on Issue No.1, found that the eye witness account of the accident was given by P.W.2, Vijay Bhatia, who appeared in the witness box from the side of the claimants. The Tribunal has held that the motor accident resulting into injuries and consequent death was the result of rash and negligent driving by the driver of the offending bus. On Issue No.2, the Tribunal has assessed the monthly income of the deceased at Rs. 3,000/- and out of this amount, loss of dependency has been determined at Rs. 2,000/-. Finding the deceased in the age group of 35-40 years, multiplier of 16 has been applied to determine just compensation in the case. Ultimately, the Tribunal has awarded compensation worth Rs. 3,84,000/- for loss of dependency and additional sum of Rs. 16,000/- towards funeral expenses and loss of consortium along with interest @ 9% per annum, as mentioned in the impugned order.

We have heard learned counsel for the appellant Sri Amar Nath Sharma as well as learned counsel for the claimant-respondents, Sri V.K.Kohli, Senior Advocate, and have carefully gone through the entire material on record including the impugned judgment and award.

It has been argued on behalf of the appellant that from the evidence on record, inference can safely be drawn that the present case was the result of the negligence on the part of the scooterist himself, who ultimately died in the accident and not due rash and negligent driving by the bus driver. We have carefully scrutinized the evidence adduced from both the sides before the Tribunal. As narrated earlier, there is positive evidence of the witness Vijay Bhatia, P.W.2, who has given ocular account of the accident before Tribunal right from the time of accident till the deceased was brought to the hospital. He has clearly stated that he came to know in the hospital that the deceased had gone to leave his children in the school and was returning to his residence from the family members of the deceased. He has stated on oath that he (the witness himself) was standing near the temple and was waiting for his brother who had gone to the temple. In the meantime, the accident was caused by the offending bus due to rashness and negligence on the part of its driver. He had seen the deceased being crushed under the wheel of the bus by his own eyes. This witness has been cross-examined at length on this score, but he remained unshaken on all material points. He witness is neither interested to the claimants nor inimical to the driver of the bus or the appellant. Learned counsel has relied on the statement of D.W.1, Bhagwan Dass, the driver of the bus. This witness has however tried to support the case of the appellant. He has stated in his evidence that he came to know on enquiry made by him, after he stopped the vehicle that the bus had struck with something. This witness could not muster courage that it was the rashness and negligence on the part of the scooterist that the accident had taken place. He could

not name the person, from whom he had enquired and what was stated by him. In his statement, this witness D.W.1 has tried to save his skin from the responsibility. The circumstance that the bus had not only hit the scooter, but the scooterist came under the wheel of the offending bus, in a place where a temple is situate, clearly indicates that the bus driver was driving the vehicle very fast and consequently, the accident has occurred. The witness being driver of the vehicle and arrayed as O.P.No.2 in the claim petition cannot be said to be impartial and independent witness. On close perusal of the entire material and in totality of the evidence on record, it is clearly established that the motor accident resulting in the death of the deceased was caused due to rash and negligent driving by the driver of the offending bus. The Tribunal has rightly arrived at the findings, which are based on proper appraisal of evidence.

So far the contention of the appellant challenging the income of the deceased is concerned, we find that in the claim petition the income of the deceased has been mentioned as Rs.6,000/-. Widow of the deceased has stated on oath that the deceased used t give the said amount for expenses of his family. Two children of the deceased were taking education in Doon International School, therefore, it can safely by taken when proof on the point of income is not available on record, that at least the income of the deceased must be Rs. 3,000/- per month. After considering the facts and circumstances, the Tribunal has assessed the income of the deceased at Rs.3,000/-, as already narrated earlier. Loss of dependency has been determined after deducting Rs.1,000/- and multiplier of ***16*** has been properly applied by the Tribunal, as narrated above. Nothing has been shown to us to take a view different from that of the Tribunal on this score. We are satisfied that the amount of Rs. 4,00,000/- along with interest in a just compensation to meet the ends of justice in the present case. There is nothing on record to warrant interference with the findings of the Tribunal.

No other point was urged or argued before us.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

26-08-2004
RCP